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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
3714	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/644,930	FOX, MARA	
	Examiner	Art Unit	
	Adetokunbo O. Torimiro	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The amendment filed on 09/06/2007 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,2,5,6,9-13, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Guess the Flavor (Kissing Games).

Re claims 1 and 5: Guess the Flavor discloses a novelty kit for producing an oral sensation during deep kissing, the novelty kit comprising a first substance / *various candy* to be placed on the tongue of a first person; and instructions / *How to play* for use of the first substance with a second person; additionally comprising a second substance / *food items* and wherein the instructions include directions for the use of the first substance and the second substance by the first person and the second person **(see page 1, Things you'll need and How to play). It is apparent to Examiner that first or second substance could be any various candy and/or food item, or different flavors of the same candy and/or food item as long as it is something edible. It is apparent that for there to be a kit in order to have the kissing game as described in Guess the Flavor.**

Re claims 2 and 6: Guess the Flavor teaches wherein the first substance has an identifiable taste; wherein the second substance has a different identifiable taste than the taste of the first substance **(see Guess the Flavor). It is apparent to the Examiner that to guess the taste of substances, there has to be identifiable taste associated with the substance**.

Re claims 9-12 and 19-22: Guess the Flavor teaches wherein the instructions direct the first person on placement on the tongue of the first substance prior to the first and second person engaging in deep kissing; wherein the instructions direct the first and second persons on placement on their respective tongues of the first and second substances prior to the first and second person engaging in deep kissing; wherein the instructions direct the first and second persons on the selection of tastes of the first and second substances; herein the instructions identify moods created by the selected tastes and wherein the instructions direct the first and second persons on the selection of the first and second substances to create a selected mood **(see How to play)**.

Re claim 13: Guess the Flavor teaches a method for producing an oral sensation during deep kissing, the method comprising: placing a first substance having an identifiable taste on the tongue of a first person **(see Guess the Flavor)**; and instructing the first person on use of the first substance with a second person **(see How to play). It is apparent to the Examiner that to guess the taste of substances, there has to be identifiable taste associated with the substance**.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 3,4,7,8,14,15,17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guess the Flavor (Kissing Games) in view of AAPA (Applicants Admitted Prior Art).

Re claims 3,4,7, and 8: Guess the flavor teaches the novelty kit containing first substance and instructions.

However, Guess the flavor does not teach the kit wherein the first substance is in the form of a solute containing an extract of the first substance; where the solute is water based; wherein the second substance is in the form of a solute containing an extract of the second substance; where the solute is water based.

AAPA teaches the kit wherein the first substance is in the form of a solute containing an extract of the first substance; where the solute is water based; wherein the second substance is in the form of a solute containing an extract of the second substance; where the solute is water based **(see background of the Invention)**.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the combination of the AAPA and Guess the Flavor game so has to have substances soluble in water and hence soluble in the mouth of the player.

Re claim 14,15,17, and 18: Guess the Flavor teaches the method for producing an oral sensation.

However, Guess the Flavor does not teach the method wherein the first substance is in the form of a solute containing an extract of the first substance; where the solute is water based; wherein the second substance is in the form of a solute containing an extract of the second substance; where the solute is water based.

AAPA teaches the method wherein the first substance is in the form of a solute containing an extract of the first substance; where the solute is water based; wherein the second substance is in the form of a solute containing an extract of the second substance; where the solute is water based **(see background of the Invention)**.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the combination of the AAPA and Guess the Flavor game so has to have substances soluble in water and hence soluble in the mouth of the player.

Response to Arguments

6. The Applicants explanation in regards to the 35 USC 112 rejection is accepted therefore, that rejection has been withdrawn.

Applicant's arguments filed 09/06/2007 have been fully considered but they are not persuasive.

The Examiner disagrees with the argument of the Applicant the Guess the Flavor reference is not prior to August 21,2002. Examiner recommends and points the Applicant to the website "archive.org" which was used by the Examiner to verify the that the date of publication

of the "virtualkiss.com" website was 02/07/2001 which is more than one year before the filing of the Applicants application. In response to the Applicant's other arguments, firstly the kit as used in the claims was interpreted by the Examiner as items needed and involved in the kissing game. The word kit as used in the claim means a set of materials, items, tools, etc. Examiner notes that items in par.2 of reference are a set of items needed for the kissing game. Secondly Examiner points to Applicant that taste is the most important oral sensation, which is taught by the reference. Thirdly, the various foods can and has to be eaten at different times because only then can the idea of identifying different taste be useful i.e. if only one food/item is used and eaten, it defeats the purpose of guessing what food/item is in the mouth. Fourthly although the applicant does not teach various food items eaten by one set of participants, the reference teaches placing d substance in the mouth of the first person, which is claimed by the applicant.

In response to the argument that there is no second substance placed on the tongue of the second person in the reference, Examiner notes that it is apparent that for the second person or second team's turn during the game, the second substance has to be placed in the second person. In response to the argument about the instructions identifying the moods, it is apparent to the Examiner that a bitter food makes the eater frown which implies that the taste of the food item used determines the eaters mood; also the Examiner points the Applicant to the background of invention in the Applicant's admitted prior art.

In response to applicant's argument that a *prima facie* case of obviousness has not been established and that there is no suggestion to combine the references regarding Claims 3,4,7,8,14,15,17, and 18, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where

there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Examiner points out to Applicant that both Guess the Flavor and AAPA teach on identifying the taste of food items/substance from kissing between two people. Examiner therefore maintains the 35 USC 103 rejection.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adetokunbo O. Torimiro whose telephone number is (571) 270-1345. The examiner can normally be reached on Mon-Fri (8am - 4pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

AT

ROBERT E. PEZZUTO
SUPERVISORY PRIMARY EXAMINER